

## **Supplementary Delegated Powers Memorandum – Economic Crime and Corporate Transparency Bill**

1. This memorandum, supplementary to the Delegated Powers Memorandum published on 31 January 2023 and the supplementary memoranda published on the 21 March 2023, 19 April 2023, 13 June 2023, and 15 June 2023 has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Economic Crime and Corporate Transparency Bill (“the Bill”).
2. The Government tabled amendments to the Bill on 20 June 2023 which introduce a further delegated power. This memorandum explains this power, why it is being taken, and the reason for the procedure being selected. The entries in this memorandum replace the entries for Clause 181 in the memorandum of 13 June 2023.

### **Clause 181: Enhanced due diligence: designation of high-risk countries**

*Power conferred on: HM Treasury*

*Power exercised by: HM Treasury Minister*

*Parliamentary Procedure: draft affirmative (with regulations brought in within the first six months following Royal Assent subject to the existing made affirmative procedure)*

#### **Context and Purpose:**

3. Schedule 3ZA to the Money Laundering Regulations, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (“MLRs”) sets out the UK’s “High-Risk Third Countries” list, inclusion on which triggers enhanced due diligence obligations set out in regulation 33 of the MLRs. Schedule 2 to and section 55 of the Sanctions and Anti-Money Laundering Act 2018 (2018 c.13) (“SAML A”) require changes to the list to be updated via the made affirmative procedure. The list is updated each time the Financial Action Task Force (“the FATF”) updates its lists of countries identified as having strategic deficiencies in their Anti-Money Laundering, Counter Terrorism Financing and Counter Proliferation Financing (AML/CTF/CPF) systems.
4. Clause 181 removes this requirement for the List to be amended through the made affirmative procedure. New paragraphs in Schedule 2 to SAML A confer powers for the MLRs to directly refer to the lists published by the FATF identifying countries with strategic AML/CTF/CPF deficiencies. The provision will mean that any countries included in the FATF lists will automatically

trigger enhanced due diligence obligations in the UK, unless otherwise specified.

5. Clause 181 also introduces a requirement that allows the inclusion (i.e. of countries not listed by the FATF) or exclusion (i.e. of countries listed by the FATF) by the UK of any additional countries to be made via the draft affirmative procedure.
6. Clause 181 also provides for regulations implementing this power in the MLRs in respect of high-risk countries (i.e. to refer to the FATF lists) to be made via the existing made affirmative procedure if they are made within six months of Royal Assent.

Justification for amending this power:

7. This clause will allow for routine updates to happen automatically, in accordance with the lists of countries the FATF identifies as having strategic deficiencies in their AML/CTF/CPF systems.
8. The current administrative and parliamentary process for amending the List via secondary legislation can prolong the time taken for necessary, routine updates and delay the implementation of requirements for the regulated sector to apply enhanced due diligence relating to high-risk third countries by several months.
9. With automatic updates by directly referring to the FATF lists, the Government can respond more quickly to international findings and provide greater clarity to businesses on which jurisdictions are deemed to be high-risk at the speed necessary, allowing businesses to protect themselves and their customers more effectively from money laundering and terrorism financing exposures.
10. This provision will also reduce pressure on parliamentary and Ministerial time, by removing the need for up to six parliamentary debates per annum for routine updates. This provision nonetheless ensures that Parliament retains the ability to scrutinise where the UK designates countries as high risk otherwise than in accordance with FATF findings, or likewise does not designate countries as high risk that are so deemed by FATF, in the event that the power was to be used to for this purpose.

Justification for the procedure:

11. The change being made via this clause will, by design, mean that there will only be parliamentary procedure for updates to the regulations where any such updates deviate from findings by the FATF.

12. These changes will streamline the process and allow the Government to meet existing policy commitments in a more efficient way. When the List was introduced in March 2021, the Government committed to updating its List to mirror the FATF's periodic updates and to align the List with the set of countries identified by the FATF as having strategic AML/CTF/CPF deficiencies. The FATF's decisions to identify countries with poor AML controls are underpinned by a robust, technical methodology and the result of high levels of scrutiny during the multilateral process.
13. In the event that regulations were to deviate from FATF findings, draft affirmative procedure is proposed to ensure Parliament can raise any concerns with changes before legislation comes into effect.
14. In the usual way, a Treasury minister will continue to deposit a copy of the outcomes of each FATF plenary, which inform changes to the list, in the libraries of both Houses.
15. For regulations that amend the MLRs to implement this power and refer to the FATF lists, the existing made affirmative procedure is proposed for a limited time period in order to be able to use the new process as soon as possible, given the frequency of the FATF plenaries through the year.